

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

JAMES DERRICK O'NEAL,

Petitioner,

vs.

MARGARET BAGLEY, Warden

Respondent.

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Case No. 1:02-cv-357

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

Death Penalty Case

**MOTION OF PETITIONER JAMES O'NEAL
FOR AN ORDER GRANTING HIM AN
EXTENSION OF TIME TO FILE HIS TRAVERSE**

Petitioner James Derrick O'Neal, through the undersigned counsel, moves the Court to issue an order pursuant to Fed. R. Civ. P. 6(b) granting him an extension of time until October 1, 2007 to file his traverse to Respondent's return of writ. The grounds for this motion are contained in the following supporting memorandum.

Respectfully submitted,

s/ John J. Gideon
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COUNSEL FOR PETITIONER

MEMORANDUM IN SUPPORT OF MOTION

On June 21, 2002, Petitioner O'Neal, having exhausted all available state court remedies with respect to the claims he intended to raise in this Court, filed his petition for a writ of habeas corpus containing seventeen claims (Doc. No. 7).

Pursuant to this Court's scheduling order of June 7, 2002 (Doc. No. 11) Respondent Bagley filed her return of writ with an appendix containing a copy of the state court record on September 9, 2002 (Doc. Nos. 14-20).

On November 12, 2002, the date originally scheduled for Petitioner to file his traverse, Petitioner filed a motion requesting leave, pursuant to the decision in Atkins v. Virginia, 536 U.S. 304 (June 20, 2002), to amend his petition to add an eighteenth claim that his death sentence should be vacated on the ground that he is mentally retarded (Doc. No. 21). On that same date Petitioner moved the Court to stay these habeas corpus proceedings to permit him to exhaust his state court remedies with respect to this new claim (Doc. No. 22).

The Court granted Petitioner's motion to amend his petition by order of November 13, 2002. The Court ordered these proceedings stayed on December 11, 2002 pending exhaustion of state court proceedings (Doc. No. 24).

On May 7, 2007, following Petitioner's filing of a status report on May 4, 2007 (Doc. No. 36) describing the exhaustion of state court remedies with respect to his Atkins claim, this Court ordered the stay of these habeas corpus proceedings vacated (Doc. No. 37) and established a case schedule which began with Petitioner's filing of his motion for leave to amend his petition on May 31, 2007 which the Court granted by notation order on June 1, 2007 (Doc. No. 38).

On June 29, 2007 Respondent filed her amended return of writ (Doc. No. 42) accompanied by the filing of the record of the state court post-conviction proceedings on Petitioner's Atkins claim (Doc. Nos. 39 and 40).

Pursuant to the Court's order of May 7, 2007 Petitioner is required to file his traverse to the amended return of writ by Saturday, September 1, 2007 (Doc. No. 37).

Counsel Gideon is taking the lead in drafting Petitioner's traverse to Respondent's amended return of writ. Although counsel has made progress in drafting the traverse, Counsel Gideon has had to devote a substantial amount of his time from early August to the present to an urgent family matter and has not been able to make sufficient progress in the drafting of the traverse to enable Petitioner's counsel to file the traverse by the date assigned by the Court. This urgent family matter is expected to be resolved during the first week of September, allowing counsel to devote sufficient time to then complete Petitioner's traverse.

Counsel respectfully request that the Court issue an order granting Petitioner an extension of time to and including Monday, October 1, 2007 in which to file his traverse.

CONSULTATION WITH OPPOSING COUNSEL

Pursuant to Local Rule 7.3(a) of the S.D. Ohio Civil Rules Counsel Gideon consulted with Assistant Attorney General Stephen Maher on Wednesday, August 29, 2007 about this motion for extension. Counsel discussed the motion with Mr. Maher by telephone and explained

the grounds for the motion and the intention to request an extension to October 1, 2007 to file Petitioner's traverse. Mr. Maher indicated to counsel that he agreed to Petitioner's motion for this extension of time.

CONCLUSION

For all the foregoing reasons Petitioner submits that he has shown good cause for his motion and respectfully requests the Court to grant him an extension of time to and including October 1, 2007 in which to file his traverse to Respondent's return of writ.

Respectfully submitted,

s/ John J. Gideon
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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2007 I electronically filed the foregoing Motion Of Petitioner James O'Neal For An Order Granting Him An Extension Of Time To File His Traverse with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Stephen E. Maher and Matthew C. Hellman, Assistant Attorneys General, Capital Crimes Section, 30 East Broad Street-23rd Floor, Columbus, Ohio 43215-3428.

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